

NO. 87-1556

Supreme Court, U.S.
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IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1987

CARLOS NATES,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PETITIONER'S REPLY BRIEF

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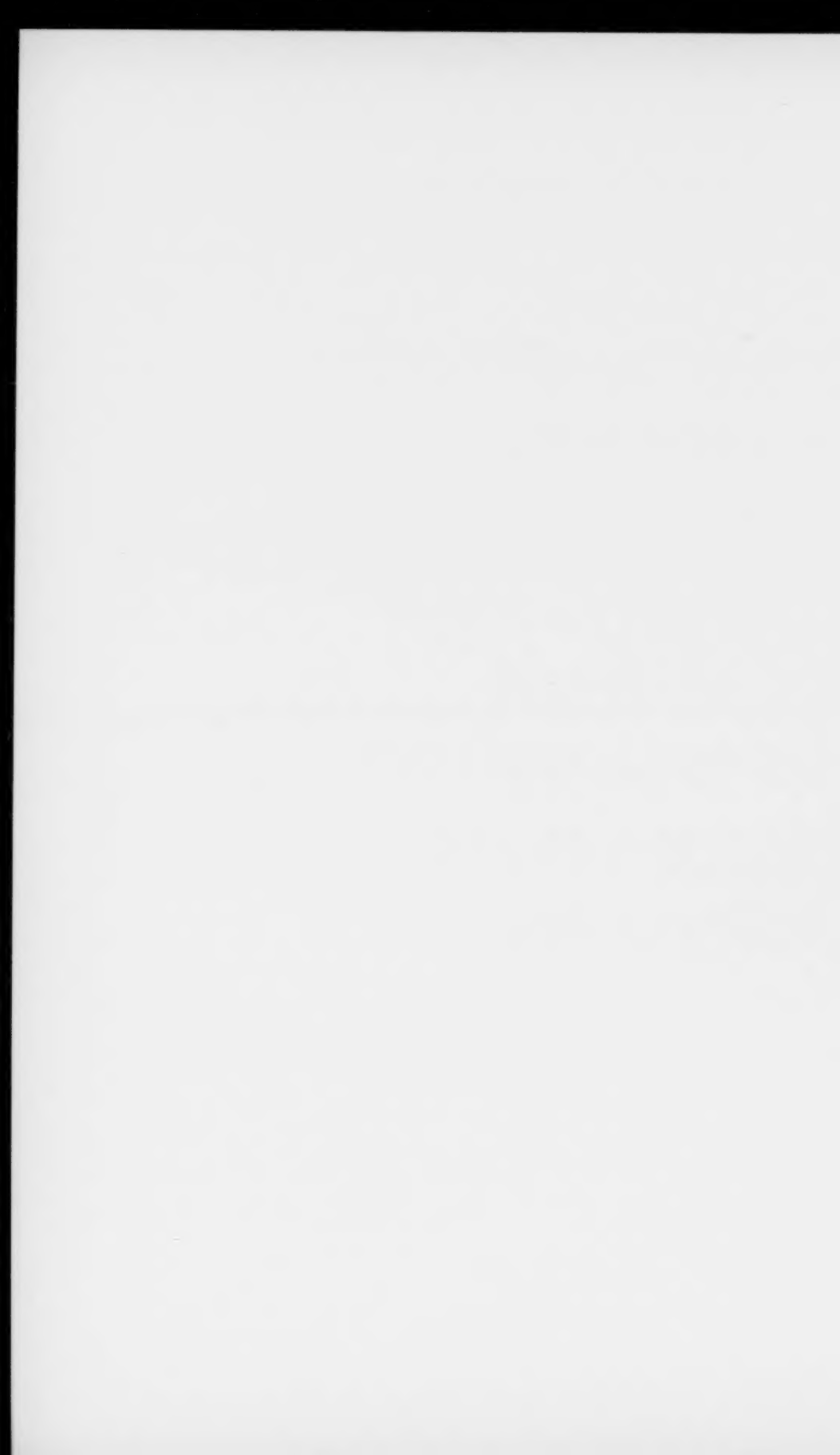
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ARGUMENT

I

THE VALIDITY OF RANDOM AND SECRET
SEARCHES OF THE LUGGAGE OF PERSONS
LEAVING THE UNITED STATES HAS NEVER
BEEN ADDRESSED BY THIS COURT AND THE
ISSUE IS ONE OF NATIONWIDE IMPORTANCE
AFFECTING THE FOURTH AMENDMENT RIGHTS
OF EVERYONE WHO CHOOSES TO LEAVE THE
UNITED STATES.

The Solicitor General's brief
recognizes that there has never been a



case decided by this Court on the issue of whether the border search exception to the Fourth Amendment applies to the search of travelers who are leaving the United States. This Court has only made a passing reference to the question in dicta in California Bankers' Association v. Schultz, 416 U.S. 21, 63 (1974), a case which did not involve either the border search exception or a factual situation similar to that presented in this case. The California Bankers' Association case involved the validity of federal statutes which required banks to maintain records of their customers' transactions and deposits.

In no less than five occasions in the past, this Court has analyzed the border search exception to the Fourth Amendment as it applies to persons entering the United States. See, United

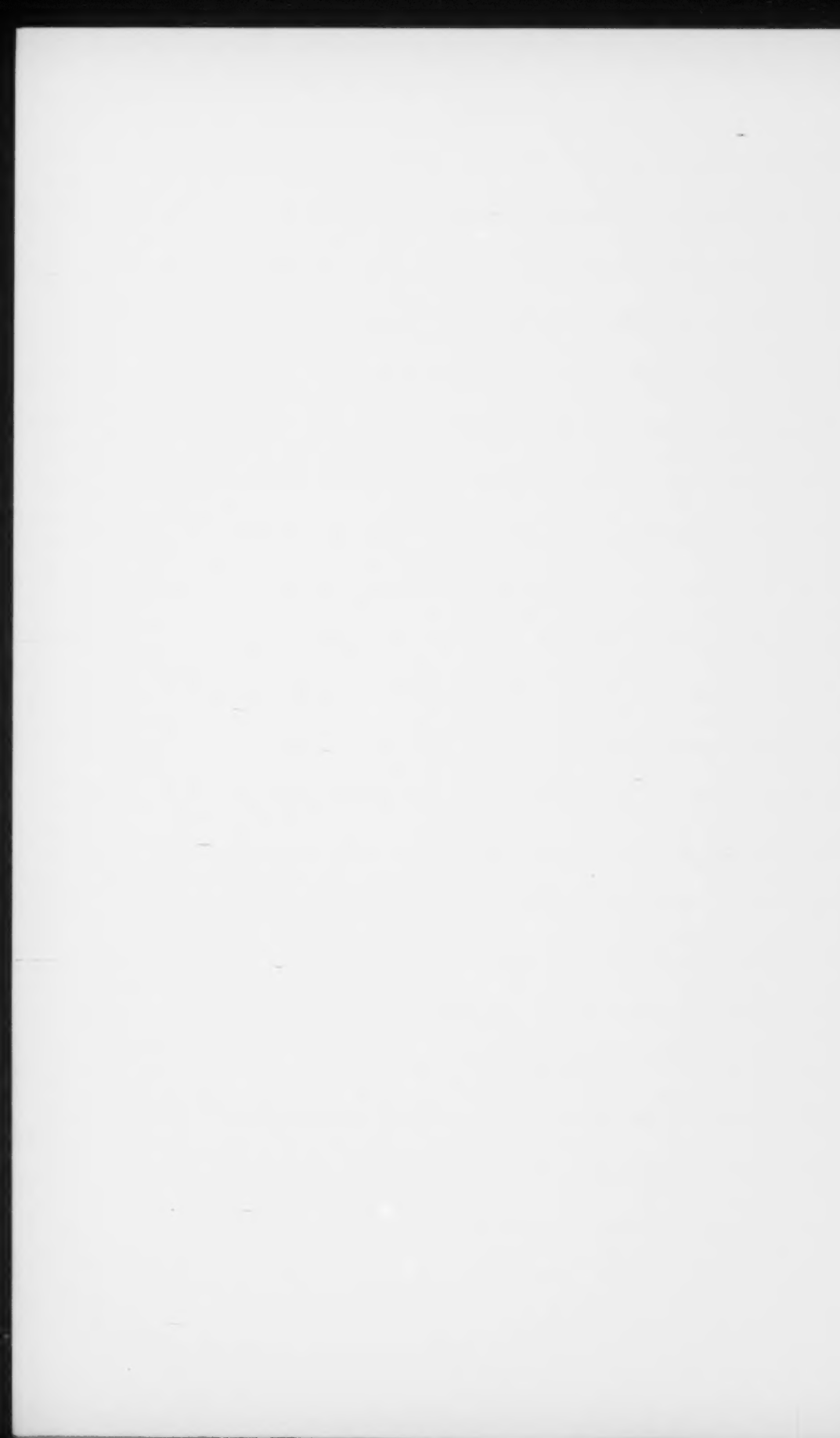


States v. Montoya de Hernandez, 473 U.S. 531 (1985); United States v. Ramsey, 431 U.S. 606 (1977); United States v. Brignoni-Ponce, 422 U.S. 873 (1975); Almeida-Sanchez v. United States, 413 U.S. 266 (1973); Boyd v. United States, 116 U.S. 616 (1886). This Court should accept certiorari in at least one case raising the issue of whether Customs agents may search persons without a warrant, without probable cause and virtually at random, who are leaving the United States.

It is not surprising that the Solicitor General recommends no further review in this case. Under the law as it exists now, United States Customs agents may search the luggage of every person who leaves the United States without any Fourth Amendment limitation at all. Furthermore, these export searches are done in secret without any

notice being given to the person leaving the country, if that person leaves by way of an airline. Customs agents assigned to the airports are simply opening the luggage of the international traveler after the luggage has been checked with the airline. The searches are conducted in the baggage holding area of the airline while the unknowing passenger is waiting to board his or her flight.

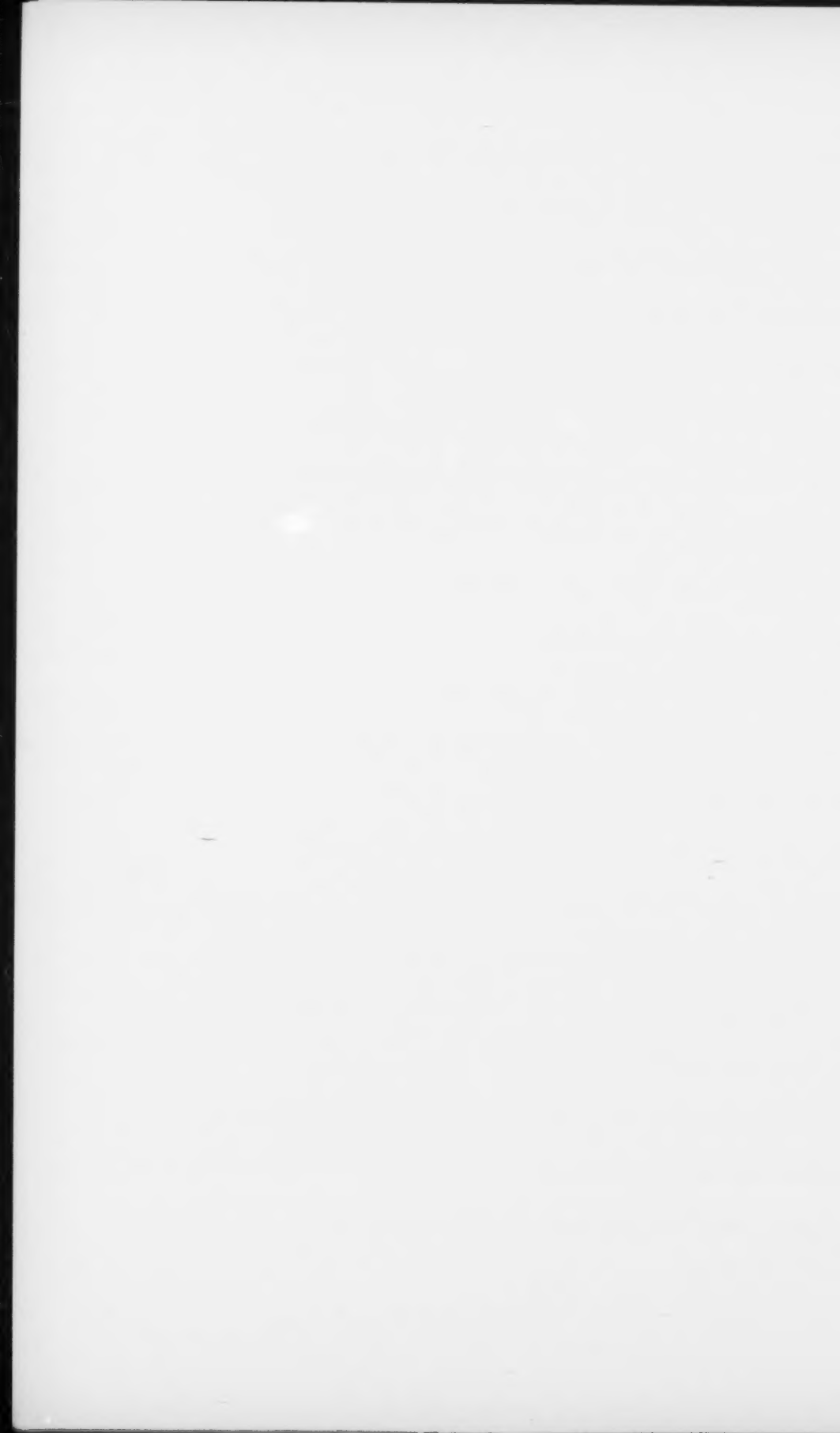
The issue raised in this case is an important one which affects large numbers of travelers who leave the United States on a daily basis, on vacation, on business, or visiting friends or family in other countries. A traveler who enters the United States at least is aware of the fact that United States Customs agents are conducting searches. Upon entering the United States, a person must present his passport and his luggage at a fixed



Customs checkpoint at the airport. While Customs agents search the luggage of the incoming traveler, the owner of the luggage is present at the search site and witnesses the search.

On the other hand, Customs searches of persons leaving the United States are not done at a fixed Customs checkpoint. The traveler has no notice that his luggage is being searched and he is not afforded the right to be present when his bags are opened and searched. This lack of notice to the traveler leaving the United States is in direct conflict with one of the most fundamental principles of the Fourth Amendment. That principle is that before conducting the search, the searching officers must give notice of their purpose and authority to the person about to be searched.

The requirement that the police

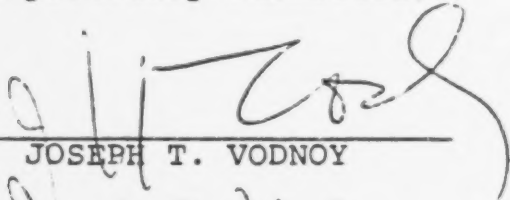


must give prior notice of their purpose and authority before entry into a residence to conduct a search is deeply rooted in our heritage. Miller v. United States, 357 U.S. 301, 313 (1958). "As early as Semayne's Case, 5 Co Rep 91a, 91b, 77 Eng Rep 194, 195 (1603), it was declared that '[i]n all cases when the King is party, the sheriff (if the doors be not open) may break the party's house either to arrest him, or to do other execution of the K[ing]'s process, if otherwise he cannot enter. But before he breaks it, he ought to signify the cause of his coming, and to make request to open doors...'. Ker v. California, 374 U.S. 23, 47 (1963).

Secret searches such as those conducted at the airport by Customs agents of the luggage of persons leaving the United States are unconstitutional.

Such searches are the hallmark of a dictatorship and a police state. If the decision of the lower court is allowed to stand, then the law will be that the King must give notice, the sheriff must give notice, but the U.S. Customs agents can do whatever they please.

Respectfully submitted,



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